

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-11-1-5-01146-16
45-004-13-1-5-01151-16
45-004-13-1-5-01165-16
45-004-15-1-5-01818-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-276-022.000-004
Assessment Years: 2011, 2013, 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2011, 2013, and 2015 assessments of his property located at 9431-35 Indian Boundary in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$5,300 (land only) for all three years under appeal.¹
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 12, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Joseph James and Robert Metz. They were all sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Petitioner Exhibit A: Property record card (“PRC”) for 2014-2018
 - Petitioner Exhibit B: PRC for 2012-2015

¹ The PTABOA issued two Form 115s for the March 1, 2013 assessment date. The Form 115 attached to Pet. No. 45-004-13-1-5-01151-16 valued the parcel at \$8,500; the Form 115 attached to Pet. No. 45-004-13-1-5-01165-16 valued it at \$5,300. However, both forms indicate that the PTABOA intended to leave the 2013 assessment unchanged. We therefore find the \$5,300 value listed on the property record cards for 2013 to be the assessed value under appeal. *See Pet. Exs. B and C.*

Petitioner Exhibit C: PRC for 2011-2013
Petitioner Exhibit D: PRC for 2007-2011
Petitioner Exhibit E: GIS map

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. The property's assessment decreased from 2010 to 2011, and it remained unchanged from 2012 to 2013 and from 2014 to 2015. Nowacki therefore bears the burden of proof for all three years under appeal.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
- a. The property is a small, buildable lot in an area with little development around it. Unlike the other properties Nowacki has appealed, the characteristics on the PRC actually reflect the conditions on the site with the exception of the neighborhood life cycle. The neighborhood life cycle is shown as static, but the property's value decreased by half from 2013 to 2014. He purchased the property in 2009. A few months before he acquired the property, Kelly McCauley purchased it for \$250. In a period of less than one year, this property sold twice for a nominal amount. If the property were worth the \$10,000 assessed value, previous owners would have sold it and not walked away from it. *Nowacki testimony; Pet'r Exs. A, B, C, D, E.*
- b. These properties are not supposed to churn through the system and change ownership randomly. The property tax system is like a web that the unsuspecting are caught up in, and that is why the properties repeatedly churn through the tax sales. People assume there is a process for correcting the assessments, but there really is not. In fact, sometimes the Assessor will jack up the assessment just to make a point and show you how vulnerable you are to the corrupt intent of the Assessor's process. *Nowacki testimony.*
- c. The appeal process is a torturous road for property owners. Nowacki has piled up three years of appeals, which is not fair. There have been corrections to some degree,

but the property is still over-assessed. Nowacki concedes the property is worth more than the nominal amount he paid for it. He believes the value of the property is \$2,600 for each appeal year. He would have paid the previous owner \$2,600 for it and he would sell it for that amount. *Nowacki testimony*.

8. The Assessor's case:

- a. The Assessor contends the assessment did not go from \$5,300 to \$10,600 then back to \$5,300. It was at \$10,600 and then reduced to \$5,300 on the same day after the Assessor applied a negative 50% influence factor because the lot is unbuildable. The Assessor recommends no change for 2011, 2013, or 2015. *James testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2011, 2013 or 2015 assessments. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation dates for the 2011, 2013, and 2015 assessments was March 1st of each assessment year. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$2,600 for all three years under appeal, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value

to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2011, 2013, or 2015, he failed to make a prima facie case for a lower assessment in any of the years under appeal. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the assessments.

ISSUED: February 10, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.